

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

NATIONAL RAILROAD PASSENGER
CORPORATION,

Plaintiff,

vs.

JOHN DAVIS TRUCKING COMPANY, INC.,
a Nevada corporation,

Defendant.

3:11-cv-00461-HDM-VPC

MINUTES OF COURT
AUGUST 25, 2014

JOHN DAVIS TRUCKING COMPANY, INC.,
a Nevada corporation,

Counterclaimant,

vs.

NATIONAL RAILROAD PASSENGER
CORPORATION, UNION PACIFIC
RAILROAD COMPANY, and DOES 1-5

Counter-defendants.

UNION PACIFIC RAILROAD COMPANY,

Counterclaimant,

vs.

JOHN DAVIS TRUCKING COMPANY, INC.,
a Nevada corporation,

Counter-defendant.

PROCEEDINGS: JURY TRIAL (DAY 16)

PRESENT:

THE HONORABLE HOWARD D. McKIBBEN, SENIOR U.S. DISTRICT JUDGE
Deputy Clerk: Paris Rich Court Reporter: Kathryn French

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At 7:48 a.m., the Court convenes.

Mark Landman, Vincent Castillo, John Moore, and Liza Sui Mendoza are present on behalf of Plaintiff and Counter-defendant NATIONAL RAILROAD PASSENGER CORPORATION (“Amtrak”) and Counter-defendant and Counterclaimant UNION PACIFIC RAILROAD (“UPRR”) with electronic technician Mark Anton.

Steven Jaffe and Karen Bashor are present on behalf of Defendant JOHN DAVIS TRUCKING COMPANY, INC. with electronic technician Greg Scott. Stephen Thompson, George Kirklin, Rick Pope, Kristen Chambers, and Gary Di Grazia are present on behalf of Counterclaimant JOHN DAVIS TRUCKING COMPANY, INC. with electronic technician Megan Thompson. Also present are John Davis and Shane Davis, corporate designees of John Davis Trucking Company, Inc.

Outside the presence of the jury, the Court addresses [705] John Davis Trucking’s Motion for Reconsideration of Admissible Exhibits and Closing Argument Topics. The Court recites findings. Mr. Landman presents objection for the record.

IT IS ORDERED, Defendant’s Exhibit D-682 is received into evidence.

IT IS FURTHER ORDERED, with respect to Witness Kaminkow’s testimony, the Court will permit reference in closing argument to Witness Kaminkow’s testimony as cited in [705] Motion on issue as to state of mind.

The Court and counsel further discuss the jury instructions and special verdict.

On behalf of John Davis Trucking Company, Inc., Mr. Jaffe offers jury instruction regarding “activation failure” (49 C.F.R. 234.5) which is rejected by the Court and marked as Defendant’s Rejected Jury Instruction No. 1.

At 8:02 a.m., the Court stands at recess.

At 8:10 a.m., the Court reconvenes outside the presence of the jury.

The Court and counsel mark and number the jury instructions 1 through 23. Counsel stipulate to the settling of the jury instructions.

On behalf of the Plaintiff, Mr. Landman recites objections to the Court’s Jury Instructions No. 20 and No. 22.

On behalf of John Davis Trucking Company, Inc., Mr. Jaffe recites objection to the Court’s Jury Instruction No. 17 and objection to the Court’s rejection of Defendant’s jury instruction regarding 49 C.F.R. 234.5, marked as Defendant’s Rejected Jury Instruction No. 1.

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On behalf of John Davis Trucking Company, Inc., Mr. Thompson offers Defendant's Jury Instruction No. 11 (Evidence Lost Through Negligence by a Party), Jury Instruction No. 12 (Willful Suppression of Evidence), and Jury Instruction No. 13 (John Davis Trucking's Evidence Tampering Defense) which are rejected by the Court and marked as the Defendant's Rejected Jury Instructions No. 2, No. 3 and No. 4.

On behalf of John Davis Trucking Company, Inc., Mr. Jaffe offers jury instruction regarding "The CDL Manual is Not a Legal Standard" which is rejected by the Court and marked as the Defendant's Rejected Jury Instruction No. 5.

Mr. Pope requests opportunity to present sur-rebuttal on behalf of the Counterclaimant. The Court states it will determine as the closing arguments progress.

At 8:20 a.m., the Court stands at recess.

At 8:25 a.m., the Court reconvenes with all parties and the jury present.

The Court instructs the jury.

Mr. Landman presents closing argument on behalf of the Plaintiff.

At 10:09 a.m., the jury is admonished and excused. The Court stands at recess.

At 10:23 a.m., the Court reconvenes outside the presence of the jury.

On behalf of John Davis Trucking Company, Inc., Mr. Jaffe recites an oral motion related to statements by Mr. Landman in closing argument as to Witness Kaminkow's operation of the train and GCOR. The Court and counsel confer regarding the Court's earlier ruling of [705] Motion. **IT IS ORDERED, the Defendant's oral motion is DENIED.**

At 10:26 a.m., the jury enters the courtroom.

Mr. Landman continues with closing argument on behalf of the Plaintiff.

Mr. Jaffe presents closing argument on behalf of John Davis Trucking Company, Inc.

At 11:51 a.m., the jury is admonished and excused. The Court stands at recess.

At 12:31 p.m., the Court reconvenes with all parties and the jury present.

Mr. Jaffe continues with closing argument on behalf of John Davis Trucking Company, Inc.

At 1:38 p.m., the jury is admonished and excused. The Court stands at recess.

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At 1:50 p.m., the Court reconvenes with all parties and the jury present.

Mr. Pope presents closing argument on behalf of John Davis Trucking Company, Inc.

At 2:00 p.m., the Court conducts a brief sidebar conference.

Mr. Pope continues with closing argument on behalf of John Davis Trucking Company, Inc.

At 3:36 p.m., the jury is admonished and excused.

At 3:50 p.m., the Court reconvenes with all parties and the jury present.

Mr. Pope continues with closing argument on behalf of John Davis Trucking Company, Inc.

At 4:25 p.m., the Court conducts a brief sidebar conference.

Mr. Pope continues with closing argument on behalf of John Davis Trucking Company, Inc.

At 4:28 p.m., the jury is admonished and excused until Tuesday, August 26, 2014 at 8:30 a.m.

Outside the presence of the jury, the Court presents statements to counsel.

Mr. Jaffe recites request that no transcript of today's arguments be provided to the Plaintiff pending the Plaintiff's rebuttal scheduled for Tuesday, August 26, 2014 at 8:30 a.m. The Court recites responsive statements.

Jury Trial (Day 17) is continued to Tuesday, August 26, 2014 at 8:30 a.m. in Reno Courtroom 4 before Howard D. McKibben. IT IS SO ORDERED.

At 4:31 p.m., the Court adjourns.

LANCE S. WILSON, CLERK

By: /s/ Paris Rich
Deputy Clerk